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Nos. 82-524, 82-545, 82-551

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

BALTIMORE GAS AND ELECTRIC COMPANY, et al.,

Petitioners,

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Respondent,

(See inside title page
for complete case caption)

On Petitions for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF THE STATE OF MINNESOTA AS AMICUS CURIAE IN SUPPORT OF AFFIRMANCE

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TABLE OF CONTENTS

PAGE

Table of Authorities.....i

I. Statement of Interest of Minnesota.....2

II. Statement of the Case.....5

III. Argument.....7

IV. Conclusion.....7

TABLE OF AUTHORITIES

PAGE

Statutes

Federal

National Environmental Policy Act, 42 U.S.C. §§4321 et seq.....2,5,6,7

Cases

Minnesota v. United States Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979).....4

Federal Regulations

10 C.F.R. §51.20.....5

Other

44 Fed. Reg. 61372, (October 25, 1979).....4

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NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Respondent,

UNITED STATES NUCLEAR REGULATORY COMMISSION
AND UNITED STATES OF AMERICA,

Petitioners,

v.

NATURAL RESOURCES DEFENSE
COUNCIL, INC., et al.,

Respondents,

COMMONWEALTH EDISON COMPANY, et al.,

Petitioners,

v.

NATURAL RESOURCES DEFENSE
COUNCIL, INC., et al.,

Respondents.

On Petitions for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF THE STATE OF MINNESOTA, BY ITS ATTORNEY GENERAL AS AMICUS CURIAE

I. STATEMENT OF INTEREST OF MINNESOTA

Pursuant to Rule 36 of the Rules of the Supreme Court of the United States, the State of Minnesota (hereinafter "Minnesota") by its Attorney General hereby files its brief amicus curiae in the above-entitled matter.

This case involves a decision of the United States Court of Appeals for the District of Columbia holding that the fuel cycle rule of the United States Nuclear Regulatory Commission (hereinafter "NRC") violates the National Environmental Policy Act, 42 U.S.C. §§4321 et seq., because it fails to allow for proper consideration of the uncertainties that underlie the assumption that buried nuclear waste will not release any radioactivity to the

environment. Minnesota's interest arises from the fact that it has two nuclear power plants within its borders: the Monticello Nuclear Generating Plant and the Prairie Island Nuclear Generating Plant.

Minnesota, through its Minnesota Pollution Control Agency (hereinafter "MPCA") participated as a party in the Atomic Energy Commission's and NRC's licensing proceedings concerning these plants. Over the years Minnesota has repeatedly expressed its concern relating to the uncertain future of the nuclear waste being produced by these plants and the NRC's refusal to address this uncertainty.

Minnesota's concern about nuclear waste disposal resulted in its bringing suit against the NRC in the United States Circuit Court of Appeals for the District of Columbia. Minnesota sought review of a

final order of the NRC in which the NRC refused to consider, in a licensing proceeding concerning the expansion of the capacity of the spent fuel storage pool at the Prairie Island plant, the MPCA's contentions relating to the disposal of nuclear wastes generated as a result of the NRC's issuance of an amendment to the operating license of the plant. The decision in that case, Minnesota v. NRC, 602 F.2d 412 (D.C. Cir. 1979), resulted in the NRC's commencement of a generic proceeding to assess its confidence that safe high-level radioactive waste disposal facilities would be available when needed. Minnesota has participated in that proceeding, which remains pending several years after its initiation (see 44 Fed. Reg. 61372, October 25, 1979).

Because the decision in the present case will directly affect the licensing of

any future nuclear power plant in Minnesota, the State has a strong interest in supporting the lower court's decision.

II. STATEMENT OF THE CASE

These consolidated cases involve a challenge by the Natural Resources Defense Council (hereinafter "NRDC") and others to the validity of Table S-3 of 10 C.F.R. §51.20, a rule of the NRC. The rule purports to set forth in numerical terms the environmental impacts created annually by a nuclear power plant by uranium fuel cycle activities, including the impacts of disposing of high level nuclear waste produced by the reactor.

The rule is used in the preparation of environmental impact statements for new nuclear power plants, the preparation of which are required by the National

Environmental Policy Act, 42 U.S.C. §§4321 et seq. (hereinafter "NEPA"). Once the numerical values of Table S-3 are incorporated into an environmental impact statement, no further discussion is required with respect to those impacts which are covered by the table. The table assumes that the burial of high level waste produced by nuclear reactors will not result in any release of radioactivity to the environment. Through the adoption of this rule the NRC has required that a "zero-release" assumption be used when cost-benefit analyses are performed for proposed nuclear plants.

The United States Court of Appeals for the District of Columbia has held that the rule establishing Table S-3 violates NEPA due to its "failure to allow for proper consideration of the uncertainties that

underlie the assumption that solidified high-level and transuranic wastes will not affect the environment once they are sealed in a permanent repository:" NRDC v. NRC, 685 F.2d 459, 494 (D.C. Cir. 1982) The petitioners seek reversal of the court's decision.

ARGUMENT

Minnesota supports the holding of the United States Court of Appeals for the District of Columbia Circuit that Table S-3 violates NEPA. Minnesota endorses and adopts by reference the arguments set forth in the brief of respondent State of New York.

CONCLUSION

For the reasons set forth in the brief of respondent State of New York, the holding

of the United States Court of Appeals for the District of Columbia Circuit should be affirmed.

Respectfully submitted,

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